UNITED STATES DEPARTMENT OF COMMERCE
Office of the Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

MAR 21 1995

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an Environmental Assessment (EA) has been performed on the following action:

TITLE: The Middle Waterway Restoration Project

LOCATION: Middle Waterway, Commencement Bay, Tacoma, Washington

SUMMARY: The Commencement Bay Natural Resource Trustees [the Puyallup Tribe of Indians; the Muckleshoot Indian Tribe; the Washington Department of Ecology (as lead state Trustee); the Washington Department of Fisheries and Wildlife; the Washington Department of Natural Resources; the U.S. Department of the Interior, including the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs; and the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce] are currently engaged in conducting a natural resource damage assessment and restoration planning for Commencement Bay (the Bay-wide NRDA).

In December 1991, Simpson Tacoma Kraft Co. (Simpson), Champion International Corp. (Champion) and the Washington Department of Natural Resources entered into a natural resource damages settlement with the Trustees regarding the St. Paul Waterway Problem Area. Under the agreement, Simpson and Champion (the companies) paid $500,000 in damages and agreed to work with the Trustees in planning a restoration project to be constructed using the damages. After a site evaluation process, the Trustees and the companies selected a parcel on the Middle Waterway owned by Simpson as the restoration project site (the Middle Waterway Habitat Restoration Project). Simpson has agreed that the property will be permanently committed to use for habitat restoration.

The Middle Waterway Habitat Restoration Project is designed to serve as a pilot project to develop information needed to plan and implement further

restoration in the Commencement Bay environment. In particular, the project will illuminate the procedures and time requirements needed to plan and obtain permits for such a project. In addition, the performance of the project will provide important insight into the viability of siting habitat restoration projects in close proximity to industrial activities on the Tacoma tideflats. The success of further Commencement Bay restoration planning depends to a considerable degree upon information to be gained from the Middle Waterway Restoration Project.

RESPONSIBLE OFFICIALS: Rolland A. Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared. A copy of the finding of no significant impact including the supporting EA is enclosed for your information. Please submit any written comments to the responsible official named above and to Bill Archambault; Office of Policy and Strategic Planning, Room 6117; U.S. Department of Commerce; Herbert Hoover Building; 14th and Constitution Avenue, N.W.; Washington D.C. 20230, at your earliest convenience.

Sincerely,

Donna Wieting

Donna Wieting
Acting Director
Ecology and Conservation Office

bcc: GCF; CS/ES; F/CU(2); F/HP(R); F/HP5(R)
F/HP5:LCardoch:301/713-0174:3/02/95;msr:FN:RC\Fonsi-MW

DEPARTMENT OF THE ARMY PERMIT

Permittee: Simpson Tacoma Kraft Company

Permit No: 93-2-01466

Issuing Office: Seattle District

Simpson Tacoma Kraft Company
Post Office Box 2133
Tacoma, Washington 98401

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The work is to modify approximately 3.3 acres of degraded, natural tideflats and created uplands to support, compliment, and preserve the integrity of the existing mudflats at the head of the Middle Waterway, Commencement Bay at Tacoma, Pierce County, Washington. Primary actions at the project site will include: excavating a total of approximately 7,900 cubic yards of material in uplands and wetlands to create tidal channels and wetlands similar to those existing in a natural estuary. This includes dredging approximately 500 cubic yards of material in an existing intertidal wetland area on the project site to about +8 to +9 MLLW; overdredging 160 cubic yards of contaminated material in the existing mudflat area and backfilling this with clean material; discharging about 534 cubic yards of the dredged material onto the existing mudflat on the site to construct an approximately 0.23 of an acre vegetated bench similar to those commonly occurring in the marsh areas of Puget Sound estuaries. In addition, upland areas will be contoured in an attempt to restore a natural shoreline; metal debris found on the site will be placed three feet below the surface, covered with a plastic liner or one foot clay layer, and covered by at least 2 feet of clean on-site fill as part of the berm construction; and appropriate natural vegetation will be planted at the new elevations to produce new upper intertidal marsh areas and an adjoining riparian buffer. Excess excavated or dredged material will be removed from the site and deposited, graded and leveled on the upland portion of the Simpson property. This work is not associated with any development project.

Project Location: In Middle Waterway, Commencement Bay, Tacoma, Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on SEP 19 1997. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification to this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify

this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

a. You must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

b. You must comply with the provisions of the attached Water Quality Certification.

c. A restoration monitoring report, as described in the Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan, dated April 1994, or status report, if construction of project has not started, will be submitted to the District Engineer 13 months after the date of permit issuance. In addition, restoration monitoring reports will be submitted to the District Engineer 12 months from the date of the first monitoring report, or status report, if construction has not started, on an annual basis for the next consecutive five year period.

d. This permit does not exclude the permittee from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et.seq.) of the 1989 Washington State Model Toxic Control Act (R.C.W. 70.105), nor does the permit waive any liability for response costs, damages, and any other cost that may be assessed under CERCLA. Additionally, the permittee will be financially responsible for any logistic problems associated with the construction and operation of this project and potential cleanup operation in this portion of Commencement Bay.

e. You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of the permit.

b. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

X _____ X August 5, 1994
Simpson Tacoma Kraft Company (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

for _____ 19 September 1994
DONALD T. WYNN (DATE)
Colonel, Corps of Engineers
District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____ _____
(TRANSFEREE) (DATE)

CENPS-OP-RG (1145)

MEMORANDUM FOR Commander

27 July 1994
Morris/x6909

SUBJECT: Department of the Army Permit Evaluation and Decision Document

1. Name: Simpson Tacoma Kraft Co. Reference: 93-2-01466

/ / Permit issuance, no objections.

/X/ Issuance, no objections, special conditions.

/ / Issuance, other objections.

/ / Issuance, special conditions.

/ / Agency objections to original proposal.

2. District Engineer sign Permit Evaluation and Decision Document.

Knaub (E.A.) [illegible]
Uhrich 8/1/94
Ch, Reg Br [illegible] 8/3/94 151
Counsel
Ch, Opns Div
DD
DE

Encl

CENPS-DE 1st End

Commander

For Ch, Reg Br

Signed forms returned herewith.

**DEPARTMENT OF THE ARMY PERMIT EVALUATION AND DECISION DOCUMENT**

Reference: Simpson Tacoma Kraft Company - 93-2-01466

Concerning evaluation of a Department of the Army permit under Section 10 of the Rivers and Harbors Act of March 3, 1899, and Section 404 of the Clean Water Act.

1. Introduction. This permit decision document constitutes the State of Findings, the Finding of No Significant Impact (FONSI), the Environmental Assessment, and the Section 404(b)(1) Evaluation for the work described in the enclosed public notice.

My decision is to issue the permit with special conditions. These special conditions are discussed in paragraph 8.

2. Description of the Proposed Work. The work is to modify approximately 3.3 acres of degraded, natural tideflats and created uplands to support, compliment, and preserve the integrity of the existing mudflats at the head of the Middle Waterway, Commencement Bay at Tacoma, Pierce County, Washington. Primary actions at the project site will include: excavating a total of approximately 7,900 cubic yards of material in uplands and wetlands to create tidal channels and wetlands similar to those existing in a natural estuary. This includes dredging approximately 500 cubic yards of material in an existing intertidal wetland area on the project site to about +8 to +9 MLLW; overdredging 160 cubic yards of contaminated material in the existing mudflat area and backfilling this with clean material; discharging about 534 cubic yards of the dredged material onto the existing mudflat on the site to construct an approximately 0.23 of an acre vegetated bench similar to those commonly occurring in the marsh areas of Puget Sound estuaries. In addition, upland areas will be contoured in an attempt to restore a natural shoreline; metal debris found on the site will be placed three feet below the surface, covered with a plastic liner or one foot clay layer, and covered by at least two feet of clean on-site fill as part of the berm construction; and appropriate natural vegetation will be planted at the new elevations to produce new upper intertidal marsh areas and an adjoining riparian buffer. Excess excavated or dredged material will be removed from the site and deposited, graded and leveled on the upland portion of the Simpson property. This work is not associated with any development project.

3. Need and Purpose. The purpose of the proposed project is to improve water quality and habitat in Commencement Bay and to implement a restoration project under the St. Paul Waterway Natural Resource Damage settlement agreement entered into by Simpson Tacoma Kraft Company (Simpson), Champion International Corporation (Champion), the Washington Department of Natural Resources (WDNR), and the Natural Resource Trustees for Commencement Bay (the Trustees).

4. Alternatives. The proposed project site consists of a natural mudflat and created uplands that are currently being used for log storage. The mudflats appear to be part of the original historic Commencement Bay tidal mudflats. Historic charts and characteristics of the mudflats suggest that this area has never been dredged or filled at any time in the past. A set of preliminary restoration criteria was applied to ten potential sites and projects. This site was chosen because of its likely value for the Commencement Bay area, and the high probability of success. This project could demonstrate how similar projects could help re-establish natural features to restored shorelines and transition

areas in Commencement Bay, could be achieved with the available funds, had minimal contamination issues that could jeopardize the long-term viability of the project, and could occur completely on land that the owner was willing to place a deed restriction on to make the land available to the restoration project in perpetuity. The Trustees, Simpson and Champion identified no other location in Commencement Bay that would meet the main project objective of increasing valuable estuarine habitat within Commencement Bay in perpetuity at a location functionally related to the previously constructed Kraft Mill habitat, the Puyallup delta, and other nearby intertidal and shallow subtidal habitat, that would result in less impact to the aquatic ecosystem.

The proposed restoration project will not result in changes in the water circulation patterns which would permanently flood or dewater the mudflat. Periodic inundation will not be disrupted, but, rather, enhanced. This is expected to positively affect the chemical and biological exchange and decomposition process occurring on the mudflat. The proposed restoration activities are intended to increase the mudflat biota, foraging area, and nursery area of the original mudflat by increasing its size and providing more natural upland habitat for fish and wildlife species. The storm surge runoff capacity of the mudflat is expected to be enhanced by the proposed project.

5. Coordination. The work was coordinated with the general public and the appropriate local, state, and Federal agencies in accordance with procedures specified in 33 CFR, Parts 320-330. The following points are considered pertinent in evaluating comments received in response to the proposal's public notice dated 23 May 1994.

a. Federal Agencies. The Environmental Protection Agency (EPA) has no objection to the proposed work. The National Marine Fisheries Service (NMFS) has no objection to the proposed work. The U.S. Fish and Wildlife Service (USFWS) has no objection to the proposed work. The National Oceanic and Atmospheric Administration (NOAA) has no objection to the proposed work. Representatives from NOAA and USFWS have played an active role in the planning and design of the restoration project and are participants in the Natural Resource Trustees for Commencement Bay.

b. State and Local Agencies. The State of Washington, and the City of Tacoma, the local governing body, have no objections to the work. Comments of these agencies are predicated upon the applicant's compliance with the State Shoreline Management Act and other applicable local laws, regulations, and codes governing this work. The City of Tacoma issued a Shorelines Substantial Development permit for the work. The State of Washington has issued a Water Quality Certification (WQC) for the project and does not object to the issuance of the permit provided the WQC is included as a condition of the permit. The Washington Department of Ecology (WDOE) has participated in the planning and design of the restoration project as members of the Natural Resource Trustees for Commencement Bay.

c. Individual or Organized Groups. The Citizens for a Healthy Bay (CHB) have no objection to the proposed work. The Commencement Bay Cleanup Action Committee (CBCAC) has no objection to the proposed work.

d. Treaty Indians. No comments were received from any Indians or from any Treaty Indian Tribes. The Muckleshoot Indian Tribe and the Puyallup Tribe of Indians are participants in the Natural Resource Trustees from Commencement Bay.

In the mid-1800's, the United States entered into treaties with a number of Indian tribes in Washington. These treaties guaranteed the signatory tribes the right to "take fish at usual and accustomed grounds and stations...in common with all citizens of the territory". Over the years, the courts have held that this right comprehends certain subsidiary rights, such as access to their "usual and accustomed" fishing grounds, and the right to take up to 50 percent of the harvestable anadromous fish runs passing through those grounds, as needed to provide them with a moderate standard of living. In U.S. v. Washington 759 F2d 1353 (9th Cir 1985) the court indicated that the obligation to prevent degradation of the fish habitat would be determined on a case-by-case basis.

The work proposed in this application has been analyzed with respect to its effects on the rights described above, and my conclusions are that (1) the work will not interfere with access to usual and accustomed fishing grounds or with fishing activities; (2) the work will not cause the degradation of anadromous fish runs and habitat; and (3) the work will not impair the tribes' ability to meet moderate living needs.

6. Impact Evaluation.

a. Affected Environment. The proposed restoration project site is located along the southeastern shore of the Middle Waterway in Commencement Bay, adjacent to a relict mudflat owned predominantly by the State of Washington. The project site contains existing mudflats and uplands that are, and have been, used for lumber and log storage. The upland portions of the project site were likely originally filled with sand from dredging of the Puyallup River delta. Simpson owns the project site and leases the upland portions of the site to Paxport Mills.

Past sampling of the project site reveal no current soil or groundwater contamination problems. Brass foundry metal debris is scattered through an upland portion of the project site at the head of Middle Waterway. Testing of the brass foundry metal debris under the Toxicity Characteristic Leaching Procedure (TCLP) has shown the metals in the debris to be considerably below state dangerous waste (DW) and extremely hazardous waste (EHW) levels.

A PSDDA sediment characterization study of the project site, conducted in February 1994, indicates that sediments on portions of the project site are slightly in excess of Washington State Sediment Quality Standards (SQS). Surface sediments at the head of Middle Waterway exceed the state SQS for mercury. Subsurface sediments elsewhere on the project site exceed the state SQS for copper.

Upland portions of the project site are largely devoid of vegetation and covered with wood debris. Plant communities found were typical of disturbed areas in Puget Sound. Upland areas included blackberry thickets (*Rubus* spp.) with several other species of shrubs and small trees including big leaf maple (*Acer macrophyllum*), red osier dogwood (*Cornus stolonifera*), and black cottonwood (*Populus trichocarpa*). Intertidal areas are dominated by a few plant species including salt grass (*Distichlis spicata*) and pickleweed (*Salicornia virginica*), and various filamentous green algae in lower intertidal areas.

The vegetation on the project site provides limited habitat. Wildlife includes several passerine birds and several types of waterfowl common to Commencement

Bay. Mammals utilizing the site may include raccoons, river otters, opossum, and introduced rodents.

There are no properties in the area that are listed or determined to be eligible for listing on the National Register of Historic Places. There are also no threatened or endangered species in the project area.

b. Impacts to Water Quality. A water quality certification for the project was issued by the Washington Department of Ecology on 21 June 1994. It contains several conditions designed to protect water quality and is contingent upon compliance with the final monitoring and adaptive management plan for the proposal. The Water Quality Certification is included as a special condition to the permit. The monitoring and adaptive management plan is a part of the cooperative agreement between Simpson and the Trustees and is also included as a condition to the Department of Army permit to ensure compliance with Section 404 of the Clean Water Act.

The project will generally have a net positive or neutral effect on water quality. Containing the brass foundry metal debris, which exceeds sediment cleanup objectives (SCO) for arsenic, copper, lead, nickel, and zinc, at the east bank of the head of the waterway, will improve water quality in this area by eliminating a potential source of contamination. Excavating the existing surface sediments in the area of the tidal channels, on the other hand, could have a minor adverse effect on water quality because of the exposure of surface sediments containing copper at levels slightly above the SQS.

The project is not expected to have an impact on current patterns and water circulation and fluctuation in the overall project area. The project also will not impact salinity gradients in the overall project area.

Minor erosion and turbidity could occur during excavation of the tidal channels, construction of the vegetative bench, and resloping of the head of the waterway. General methods to control erosion and turbidity during project construction will include the placement of: (a) erosion control procedures to contain the excavation sediments, such as the placing of a silt fence in the waterway; and (b) straw mulch on exposed slopes. If necessary, work conducted below the mean higher high water (MHHW) line will also be limited to the six hours of low tide to minimize sediment discharge into the waterway.

c. Impacts to the Aquatic Ecosystem. The project is designed to enhance aquatic habitat through the restoration of estuarine intertidal and saltmarsh habitats. The project will increase the acreage of wetland and mudflat habitats on the project site. Currently, the project site only contains a very narrow fringing saltmarsh waterward of the MHHW line (there are no freshwater wetlands on the project site). A small portion of the existing mudflat habitat on the project site (0.23 acres) will be filled to create wetland habitat. Additional mudflat habitat will be restored resulting in a slight net increase of mudflat habitat (0.30 acres) on the site.

If successful, the project will provide a more complex component of the mudflat/wetland ecosystem than currently exists in Middle Waterway or Commencement Bay. Only an estimated 57 acres (or 1%) of emergent marsh habitat remains in Commencement Bay of the estimated 3,814 acres of emergent marsh habitat that once occurred in a wide band between the MHHW level and the present location of Interstate 5. Much of this remaining emergent marsh habitat is probably not original habitat.

The project is expected to enhance the aquatic food web over existing conditions at the site. New wetland habitat at the site may contribute to food chain production, fish and wildlife habitat, hydrologic support, shoreline protection, storm and floodwater storage, groundwater recharge, and water purification. New riparian habitat at the site may provide nesting, roosting, feeding, and cover for mammals, reptiles, waterfowl and songbirds. It will also stabilize the bank of the waterway with roots, and filter out nutrient runoff from uplands.

The tideflat's habitat value may also increase because of the food source provided by the newly established riparian vegetation combined with the protection provided by this buffer strip. Thus, the habitat may become more valuable to both aquatic organisms such as young marine fish and salmonids, as well as to the shorebirds and otter that presently use the Middle Waterway tideflat. Intertidal flats contribute nesting, nursery, and feeding habitat for invertebrates and fish; feeding and resting habitat for birds and mammals; nutrient cycling; shoreline protection from erosion; and dissipation of storm surge runoff (40 CFR § 230.42).

No long-term cumulative or secondary adverse impacts are anticipated to the aquatic ecosystem in either the project area or in Commencement Bay as a whole as a result of the project. The project is expected to have long-term positive secondary and cumulative impacts on the aquatic ecosystem of the Middle Waterway area and in Commencement Bay.

d. Impacts to Wildlife. No adverse impacts are expected to occur to wildlife as a result of the project. No federally listed threatened or endangered species will be impacted by the proposal.

The proposed habitat restoration project is expected to have a long-term positive impact on bird use in the project area as a result of changes in both the quality and quantity of habitat available. The new intertidal habitat will provide elevations suitable for shorebirds and the clean, new substrate will support benthic and epibenthic animals that shorebirds feed upon.

e. Impacts to Human Use. The project is expected to have a positive impact on recreational and commercial fisheries in the Puyallup River/Commencement Bay areas by provision of habitat that may be used by young marine fish and salmonids. Indian commercial and recreation fisheries and non-Indian recreational fisheries exist in Commencement Bay, primarily for several salmon species. The various dredge and disposal activities associated with the proposal will occur outside the major fishing periods and outside the fisheries closure period (15 March to 15 June) and will not adversely impact the fisheries. Other than positive impacts on fisheries, no other water-related recreation will be impacted by the project.

The current use of the site and adjacent properties is industrial urban shoreline. The proposal is compatible with surrounding land uses and is consistent with existing zoning, shoreline, land use plans, and policies. There are no known landmarks or evidence of historic, archaeological, scientific or cultural importance on or next to the site.

The project will take two to three months to construct. Views during construction will be of dredging and grading activities, not atypical of the Commencement Bay industrialized area. Other than short-term emissions to the air during construction and perhaps hydrogen sulfide during dredging, no impacts to air quality will occur due to project implementation. The proposed project will

not significantly affect energy use. No long-term noise impacts will be created by the project. The project will not impact public utilities or services.

Views in the immediate vicinity of the project site will be improved by the project. The project will restore the natural shoreline and create a natural transition from the original mudflat to upland industrial uses. The project will also remove debris from the surface of the site, restore riparian and wetland habitat on-site, and establish a vegetative buffer to screen the estuarine habitat from adjacent human activity.

f. Summary. Both the individual and cumulative impacts of the proposed work have been evaluated by this office. Evaluation considered relevant factors including conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. Possible alternatives to reducing identified adverse impacts have also been considered and incorporated where practicable.

The project helps to implement and is consistent with the restoration goal and principles of the Trustees and the Commencement Bay NRD Restoration Panel (1992-1993) and the U.S. Army Corps of Engineers Cumulative Impact Studies for Commencement Bay. The project also helps to implement and is consistent with the vision, and restoration and land use goals and principles, of the Commencement Bay Cleanup Action Committee (CBCAC), the CBCAC Commencement Bay Watershed Restoration Landscape Concept Plan, and other efforts in Commencement Bay and the Lower Puyallup Watershed.

This evaluation has not identified any potentially significant adverse effects that would accrue from any actions taken under the terms of this permit.

7. Section 404(b)(1) Evaluation. The work was evaluated pursuant to Section 404(b)(1) of the Clean Water Act in accordance with the guidelines promulgated by the Environmental Protection Agency (EPA) (40 CFR 230) for evaluation of the discharge of dredged or fill material into waters of the United States. A total of ten potential restoration sites were identified during the initial review of project implementation. The proposed discharge (with incorporation of the monitoring and adaptive management plan) represent the least environmentally damaging practicable alternative and include all appropriate and practicable measures to minimize adverse effects on the aquatic environment.

The restoration of the existing mudflat will reestablish the historic grade of the tideland, and allow it to function in a more natural way. The proposed restoration activities will reestablish the water circulation patterns, and decrease the possibility of erosion and accretion in this area. The changes in the patterns of inundation also may positively affect the chemical and biological exchange and decomposition processes occurring on the mudflat. This should restore the deposition of suspended material affecting the productivity of the area. The proposed changes may increase mudflat biota, foraging areas, and nursery areas.

Consideration has been given to the need for the work, and to such water quality standards as are appropriate and applicable by law. The work will not result in the unacceptable degradation of the aquatic environment.

8. Determinations. I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application, as well as the stated views of other interested Federal and non-Federal agencies and the concerned public, relative to the work in waters of the United States.

I have made the following determinations:

a. Special Conditions.

1. The permittee must provide a copy of the permit transmittal letter, the permit form, and drawings to all contractors performing any of the authorized work.

2. The permittee must comply with the provisions of the attached Water Quality Certification.

3. A restoration monitoring report, as described in the Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan, dated April 1994, or status report, if construction of project has not started, will be submitted to the District Engineer 13 months after the date of permit issuance. In addition, restoration monitoring reports will be submitted to the District Engineer 12 months from the date of the first monitoring report, or status report, if construction has not started, on an annual basis for the next consecutive five year period.

4. This permit does not exclude the permittee from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et.seq.) of the 1989 Washington State Model Toxic Control Act (R.C.W. 70.105), nor does the permit waive any liability for response costs, damages, and any other cost that may be assessed under CERCLA. Additionally, the permittee will be financially responsible for any logistic problems associated with the construction and operation of this project and potential cleanup operation in this portion of Commencement Bay.

b. Finding Of No Significant Impact. Performance of this work in accordance with the standard and special conditions of the permit, will not significantly affect the quality of the human environment. Further, I have determined that the issuance of this particular permit is a Federal action not having a significant impact on the environment. I have thus concluded that the preparation of a formal Environmental Impact Statement is not required.

c. Section 404(b)(1) Evaluation. The discharges and methods specified in the proposed work are in accordance with the Section 404(b)(1) guidelines.

d. Public Interest. The proposed work is considered to be not contrary to the general public interest. The project will result in positive impacts on the aquatic environment on the project site, including removal of a potential source of contaminants to the aquatic environment, generally cleaner substrate conditions than presently exist, and an increase in estuarine habitat valuable to bird and aquatic life and screened from adjacent industrial uses. The only adverse impacts to the aquatic ecosystem associated with the project are minor erosion and turbidity impacts occurring during project construction.

9. Findings. The work complies with state and local laws and is consonant with National policy, statutes, and administrative directives. I find that issuance of a Department of the Army permit with special conditions for this work is based upon a thorough analysis of the various evaluation factors and determinations that have been identified herein.

8/3/94
Date

for Donald T. Wynn
Colonel, Corps of Engineers
District Engineer

MIDDLE WATERWAY RESTORATION PROJECT
COMMENCEMENT BAY
TACOMA, WASHINGTON

MIDDLE WATERWAY RESTORATION PROJECT PERMITS:

1) **City of Tacoma Determination of Non-Significance (DNS)**
- Washington State Environmental Policy Act (SEPA) Project Identification Code (PIC) File # D3322-93. Department File # 141.559.
- Issued on October 22, 1993.
- Issued pursuant to Washington Administrative Code (WAC) 197-11-340

2) **Shoreline Substantial Development Permit**
- Number 141.559
- Issued by the City of Tacoma on January 4, 1994.
- Issued pursuant to The Shorelines Management Act [Chapter 90.58, Revised Code of Washington (RCW)]
- September 21, 1993 the application received by the City of Tacoma.
- November 23, 1993 a public hearing held.
- December 20, 1993 - City of Tacoma Hearing Examiner recommended approval of the application submitted by the Simpson Tacoma Kraft Company pursuant to Tacoma Municipal Code Section 1.23.070.1 and Chapter 13.10 of the Official Code of the City of Tacoma.
- January 4, 1994 Permit granted by unanimous vote of the City Council.

Permit Conditions
- Prior to excavation, the applicant shall contact and coordinate any excavation and on-site containment or off-site removal and disposal of brass foundry debris found on the project site with the Ecology Commencement Bay Nearshore Tideflats Urban Bay Action Team to ensure consistency with Environmental Protection Agency (EPA) and Ecology Source Control Activities.
- The applicant shall record a deed restriction to ensure that the project provides habitat in perpetuity.
- The applicant shall secure an agreement with the Union Pacific Railroad to protect plantings during routine maintenance of the adjacent rail property.
- Construction shall conform to the proposal as described in the applicant's permit applications. As-constructed drawings shall be filed with the City upon completion.

3) **Shoreline Substantial Development Permit**
- Filed with the Washington Department of Ecology Shorelands and Coastal Zone Management Program as Permit Number 1994-15295
- Filed on January 6, 1994.
- The restoration project is located within the S-10 Port Industrial Shoreline District, and is designated as Urban in the Tacoma Shoreline Master Program (TSMP). The area upland of the shoreline district is zoned M-3 Heavy Industrial Zoning District.

4) **Hydraulic Project Approval**
- Issued by the Washington Department of Fish and Wildlife (WDFW) as Control No. 93-S1466-02.
- Issued on June 10, 1994.
- Issued pursuant to RCW 75.20.100 and 75.20.103

Permit Conditions

- Permit is valid beginning June 15, 1994. Work must be completed by March 15, 1996.
- Work below the ordinary high waterline shall not occur from March 15 through June 14 of any year for the protection of migrating juvenile salmonids.
- The Washington Department of Fish and Wildlife (WDFW) Region Habitat Manager must be notified at least seven working days prior to the start of construction.
- Project activities shall not occur when the project area is inundated by tidal waters.
- Trenches, depressions, or holes created in the intertidal area that could potentially entrap fish during high tides shall be connected to lower tidal areas by channels (to create escape routes) or backfilled prior to inundation by tidal waters.

**5) Water Quality Certification.**

- Issued by the Washington Department of Ecology as Public Notice No. 93-2-01466
- Issued on June 21, 1994.
- Issued pursuant to applicable provisions of sections 301, 302, 303, 306, and 307 of the Federal Clean Water Act as amended, and other appropriate requirements of State Law.

Permit Conditions

- Certification is subject to compliance with the provisions of the enclosed Hydraulic Project Approval from the Washington Department of Fish and Wildlife (WDFW).
- If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease immediately and notify the Department of Ecology of such conditions.
- Work in or the waterway shall be done during low tides in order to minimize turbidity, erosion and other water quality impacts.

**6) Department of Defense, Army Corps of Engineers, Seattle District.**

- Issued as File: 93-2-01466.
- Issued on September 19, 1994.
- Authorized pursuant to: Section 10 of the Rivers and Harbor Act of 1899 (33 U.S. C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The Department of the Army Permit Evaluation and Decision Document constituting the Finding of No Significant Impact, the Environmental Assessment, and the Section 404 (b) (1) Evaluation is included in the permit issuance.

Permit Conditions

- Valid until September 19, 1997 unless an extension is received.
- Monitor the project as specified in the Middle Waterway Shore Restoration Project Monitoring and Adaptive Management Plan, dated April 1994.
- Comply with the Water Quality Certification and Hydraulic Project Approval.
- Immediately notify the Army Corps of Engineers if previously unknown historical or archeological resources are discovered during construction.
- Notify the Army Corps of Engineers if the property and permit are transferred to a new party.
- Allow representatives from the Corps of Engineers to inspect the site to ensure compliance with the terms and conditions of the permit.
- Provide a copy of the permit to all contractors performing the authorized work.
- Record permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

## MIDDLE WATERWAY RESTORATION PROJECT PERMITS:

| Reference Number | Permit Agency | Date Issued | Name of Permit | Permit Number |
|---|---|---|---|---|
| 1 | City of Tacoma | 10/22/93 | Determination of Nonsignificance | 141.559 SEPA-D3322-93 |
| 2 | City of Tacoma | 1/4/94 | Shoreline Substantial Development Permit | 141.559 |
| 3 | Ecology | 1/6/94 | Shoreline Substantial Development Permit-FILED | 1994-15295 |
| 4 | Department of Fish and Wildlife | 6/10/94 | Hydraulic Project Approval | 93-S1466-02 |
| 5 | Ecology | 6/21/94 | Water Quality Certification 401 | 93-2-01466 |
| 6 | Army Corps of Engineers | 9/19/94 | Section 404 of Clean Water Act and Section10 Rivers and Harbor Act | 93-2-01466 |

| Reference Number | Permit Conditions |
|---|---|
| 1 | NA |
| 2 | • Prior to excavation, the applicant shall contact and coordinate any excavation and on-site containment or off-site removal and disposal of brass foundry debris found on the project site with the Ecology Commencement Bay Nearshore Tideflats Urban Bay Action Team to ensure consistency with Environmental Protection Agency and Ecology Source Control Activities.<br>• The applicant shall record a deed restriction to ensure that the project provides habitat in perpetuity.<br>• The applicant shall secure an agreement with the Union Pacific Railroad to protect plantings during routine maintenance of the adjacent rail property.<br>• Construction shall conform to the proposal as described in the applicant's permit applications. As-constructed drawings shall be filed with the City upon completion. |
| 3 | See above. |
| 4 | • Permit is valid beginning June 15, 1994. Work must be completed by March 15, 1996.<br>• Work below the ordinary high waterline shall not occur from March 15 through June 14 of any year for the protection of migrating juvenile salmonids.<br>• The Washington Department of Fish and Wildlife Region Habitat Manager must be notified at least seven working days prior to the start of construction.<br>• Project activities shall not occur when the project area is inundated by tidal waters.<br>• Trenches, depressions, or holes created in the intertidal area that could potentially entrap fish during high tides shall be connected to lower tidal areas by channels ( to create escape routes) or backfilled prior to inundation by tidal waters. |

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- Certification is subject to compliance with the provisions of the Hydraulic Project Approval issued by the Department of Fish and Wildlife.
- If an oil sheen or distressed or dying fish are observed in the project vicinity, the operator shall cease immediately and notify the Department of Ecology of such conditions.
- Work in or the waterway shall be done during low tides in order to minimize turbidity, erosion and other water quality impacts.

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FINDING OF NO SIGNIFICANT IMPACT

Based on a review of this environmental permit and the available information relative to the proposed action, I concur with the U.S. Army Corps of Engineers, Seattle District that there will be no significant environmental impacts from this action. Furthermore, I agree that preparation of an Environmental Impact Statement on this action is not required by the National Environmental Policy Act or its implementing regulations.

MAR 16 1995

Gary Matlock

for Rolland A. Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration

Date

# FINDING OF NO SIGNIFICANT IMPACT
# MIDDLE WATERWAY RESTORATION PROJECT
# COMMENCEMENT BAY, TACOMA, WASHINGTON

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
North Pacific Coast Ecoregion
Western Washington Office

## PROPOSED ACTION

The U.S. Fish and Wildlife Service currently participates as a Trustee in the natural resource damage assessment and restoration planning for Commencement Bay. The Commencement Bay Natural Resource Trustees include the Puyallup Tribe of Indians; the Muckleshoot Indian Tribe; the Washington State Department of Ecology (as lead state Trustee); the Washington Department of Fish and Wildlife; the Washington Department of Natural Resources (WDNR); the U.S. Department of the Interior, including the U.S. Fish and Wildlife Service (Service) and the Bureau of Indian Affairs; and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce.

In December of 1991, Simpson Tacoma Kraft Company (Simpson), Champion International Corporation (Champion) and WDNR entered into a natural resource damages settlement with the Trustees regarding the St. Paul Waterway Problem Area. As a portion of the agreement, Simpson and Champion paid $500,000 in damages and agreed to work with the Trustees in planning and constructing a restoration project utilizing these funds.

Initial project selection included review of ten potential restoration projects. Potential projects were evaluated based on cost-effectiveness, functional connection, and ability to provide an evaluation of new approaches and/or technologies that might be useful in planning future restoration projects in Commencement Bay. Following project evaluation, the Trustees and Simpson and Champion selected a parcel on the southeastern shore of Middle Waterway, owned by Simpson, as the restoration project site. Simpson has agreed that the site will be set aside in perpetuity for habitat purposes.

The environmental assessment (EA) and decision document prepared by the U.S. Army Corps of Engineers has been incorporated by reference. The Service conducted an independent review and evaluation of the information contained in the EA and decision document. Based upon this independent review and evaluation it has been determined that the environmental effects of the proposed action will not have a significant impact on the quality of the human environment. The Middle Waterway Restoration Project (Project) is designed to restore components of the historic ecosystem, specifically to provide additional intertidal habitat and a riparian buffer. These habitat improvements will benefit the environment by increasing food chain production, fish and wildlife habitat, shoreline protection and water quality. In addition, the Project is designed to serve as a pilot project to develop information to aid planning and implementation of future restoration in the Commencement Bay environment. Project planning has already provided valuable information

on procedures and the time frame necessary for permitting such a project. Project monitoring will provide insight into the viability of siting restoration projects in close proximity to industrial activities and the success of various methods for establishing intertidal and riparian vegetation. Future Commencement Bay restoration efforts will benefit from the information gained from the Middle Waterway Restoration Project.

DETERMINATION

Based on an independent review and evaluation of the information contained in the incorporated references cited below, it is my determination that the proposed restoration project does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102 (2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement is not required.

for Lynn P. Childers
David C. Frederick
Supervisor

5/16/95
Date

References:
Department of the Army Permit (93-2-01466)
Environmental Assessment
Decision Document
List of Project Permits